Nos. 14-1453, 14-1418, 14-1505, 15-35, 15-105, 15-119 & 15-191

IN THE

Supreme Court of the United States

DAVID A. ZUBIK, *et al.*,

Petitioners,

v.

SYLVIA BURWELL, *et al.*,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD, FIFTH, TENTH, AND D.C. CIRCUITS

BRIEF OF NATIONAL WOMEN'S LAW CENTER AND 68 OTHER ORGANIZATIONS AS *AMICI CURIAE* SUPPORTING RESPONDENTS AND AFFIRMANCE

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February 17, 2016

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Cases

Bd. of Dirs. of Rotary Int'l v. *Rotary Club of Duarte*, 481 U.S. 537 (1987) 8, 9

Burwell v. *Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014) ..... *passim*

Catholic Health Care Sys. v. *Burwell*, 796 F.3d 207 (2d Cir. 2015) 4

Cutter v. *Wilkinson*, 544 U.S. 709 (2005) 22

East Texas Baptist Univ. v. *Burwell*, 793 F.3d 449 (5th Cir. 2015) 4

Estate of Thornton v. *Caldor, Inc.*, 472 U.S. 703 (1985) 23

Geneva College v. *U.S. Secretary of Health and Human Services*, 778 F.3d 422 (3rd Cir. 2015) 4

Gonzales v. *O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006) 22

Jacobson v. *Massachusetts*, 197 U.S. 11 (1905) 8

Cited Authorities

Page

Little Sisters of the Poor Home v. *Burwell*,
794 F.3d 1151 (10th Cir. 2015) 4

Michigan Catholic Conference & Catholic Family Servs. v. *Burwell*,
755 F.3d 372 (6th Cir. 2014) 4

Planned Parenthood of Se. Pa. v. *Casey*,
505 U.S. 833 (1992) 17

Priests for Life v.
U.S. Dep't of Health and Human Servs.,
772 F.3d 229 (D.C. Cir. 2014) ..... *passim*

Prince v. *Massachusetts*,
321 U.S. 158 (1944) 8

Roberts v. *U.S. Jaycees*,
468 U.S. 609 (1984) 8

United States v. *Lee*,
455 U.S. 252 (1982) 23

United States v. *Virginia*,
518 U.S. 515 (1996) 8

United States v. *Wilgus*,
638 F.3d 1274 (10th Cir. 2011) 22

Univ. of Notre Dame v. *Burwell*,
786 F.3d 606 (7th Cir. 2015) 4, 7-8

Cited Authorities

Page

Wheaton Coll. v. *Burwell*,
791 F.3d 792 (7th Cir. 2015) 25

Statutes

26 U.S.C. § 23 29

26 U.S.C. § 32 29

26 U.S.C. § 36B 28

26 U.S.C. §§ 4980D 28

26 U.S.C. § 4980H 28

29 U.S.C. § 206 35

42 U.S.C. § 300gg-13 2

42 U.S.C. § 1396a 31

42 U.S.C. § 2000bb-1 2

Other Authorities

42 C.F.R. § 59.2 32

42 C.F.R. § 59.5(a)(7) 32, 33

45 C.F.R. § 147.130 2

Cited Authorities

Page

45 C.F.R. § 147.131 ..... 2, 3

155 Cong. Rec. S12,021-114 (daily ed. Dec. 1, 2009) 19, 20

81 Fed. Reg. 4036 (Jan. 25, 2016) 33

Ctrs. for Disease Control & Prevention, *Question and Answers: Zika Virus Infection (Zika) and Pregnancy*, http://www.cdc.gov/zika/pregnancy/question-answers.html 10

Ctrs. for Medicare & Medicaid Servs., *The State Medicaid Manual, available at* http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals-Items/CMS021927.html 10, 33

Carmen DeNavas-Walt & Bernadette D. Proctor, U.S. Census Bureau, *Income and Poverty in the United States: 2014* (Sept. 2015), *available at* http://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf 16

Alana Eichner & Katherine Gallagher Robbins, Nat'l Women's Law Ctr., *National Snapshot: Poverty Among Women & Families*, 2014 (Sept. 2015), *available at* http://www.nwlc.org/sites/default/files/pdfs/povertysnapshot2014.pdf 17

Cited Authorities

Page

Lawrence B. Finer & Mia R. Zolna, *Shifts in Intended and Unintended Pregnancies in the United States, 2001–2008*, 104 Am. J. Pub. Health 543 (2014) 11

Jennifer Frost, et al., *Contraceptive Needs and Services, 2013 Update*, The Guttmacher Inst. (July 2015) *available at* http://www.guttmacher.org/pubs/win/contraceptive-needs-2013.pdf.....32

Jennifer J. Frost & Laura Dubertstein Lindberg, Guttmacher Inst., *Reasons for Using Contraception: Perspectives of US Women Seeking Care at Specialized Family Planning Clinics*, 87 Contraception 465 (2013) 17, 18

Rachel Benson Gold, *The Need for and Cost of Mandating Private Insurance Coverage of Contraception*, 1 Guttmacher Rep. on Pub. Pol'y 5 (1998) 14, 15

Claudia Goldin & Lawrence F. Katz, *The Power of the Pill: Oral Contraceptives and Women's Career and Marriage Decisions*, 110 J. Pol. Econ. 730 (2002) 18

Debra Goldschmidt, *CDC Expands Zika Virus Alert; More Countries Issue Pregnancy Warnings*, CNN, Jan. 22, 2016, http://www.cnn.com/2016/01/22/health/new-zika-warnings/ 10

Cited Authorities

Page

Elise Gould et al., Econ. Policy Inst., *What Families Need to Get By: EPI's 2015 Family Budget Calculator* (Aug. 26, 2015), http://www.epi.org/publication/what-families-need-to-get-by-epis-2015-family-budget-calculator/ 13

Guttmacher Inst., *Contraceptive Use in the United States* (Oct. 2015), http://www.guttmacher.org/pubs/fb_contr_use.html.....36

Guttmacher Inst., *A Real-Time Look at the Impact of the Recession on Women's Family Planning and Pregnancy Decisions* (Sept. 2009), http://www.guttmacher.org/pubs/RecessionFP.pdf.....14

Health Res. & Servs. Admin, U.S. Dep't of Health & Human Servs., *Women's Preventive Services Guidelines*, http://www.hrsa.gov/womensguidelines 2, 20

Julie Hudman & Molly O'Malley, Kaiser Comm'n on Medicaid & the Uninsured, *Health Insurance Premiums and Cost Sharing: Findings from the Research on Low-Income Populations* (March 2003), https://kaiserfamilyfoundation.files.wordpress.com/2013/01/health-insurance-premiums-and-cost-sharing-findings-from-the-research-on-low-income-populations-policy-brief.pdf.....13

Cited Authorities

Page

Inst. Of Med., *Clinical Preventive Services for Women: Closing the Gaps* (2011), *available at* http://www.iom.edu/reports/2011/clinical-preventive-services-for-women-closing-the-gaps.aspx. . . . . *passim*

Internal Revenue Serv., *Publication 501, Exemptions, Standard Deduction, and Filing Information* (2015), *available at* https://www.irs.gov/pub/irs-pdf/p501.pdf 29

Su-Ying Liang et al., *Women's Out-Of-Pocket Expenditures and Dispensing Patterns for Oral Contraceptive Pills Between 1996 and 2006*, 83 Contraception 528 (2011) 16

Cassandra Logan et al., *The Consequences of Unintended Childbearing: A White Paper* (May 2007), http://thenationalcampaign.org/sites/default/files/resource-primary-download/consequences.pdf 11

Anne Morrison & Katherine Gallagher Robbins, Nat'l Women's Law Ctr., *Women's Overrepresentation in Low-Wage Jobs* (Oct. 2015), *available at* http://www.nwlc.org/sites/default/files/pdfs/chartbook_womens_overrepresentation_in_low-wage_jobs.pdf. 16

Cited Authorities

Page

NARAL Pro-Choice Am., *Title X: The Nation's Cornerstone Family-Planning Program* (Jan. 2010), *available at* http://www.prochoiceamerica.org/assets/files/birth-control-family-planning-titlex-cornerstone.pdf 32

National Bus. Grp. on Health, *Investing in Maternal and Child Health: An Employer's Toolkit* (2007), *available at* http://www.businessgrouphealth.org/pub/f3004374-2354-d714-51[illegible] b5bc1885758a.....14

Nat'l Women's Law Ctr., *FAQ About the Wage Gap* (Sept. 2015), *available at* http://nwlc.org/wp-content/uploads/2015/08/faq_about_the_wage_gap_9.23.15.pdf 16

Office of Population Affairs, *Program Requirements for Title X Funded Family Planning Projects* (Apr. 2014), *available at* http://www.nationalfamilyplanning.org/document.doc?id=1462 34

Office of Population Affairs, *Title X Family Planning*, http://www.hhs.gov/opa/title-x-family-planning/.....31

Julia Paradise, *Medicaid Moving Forward*, The Kaiser Comm'n on Medicaid & the Uninsured (Mar. 2015) *available at* http://files.kff.org/attachment/issue-brief-medicaid-moving-forward 32

Cited Authorities

Page

Jeffrey F. Peipert et al., *Preventing Unintended Pregnancies by Providing No-Cost Contraception*, 120 Obstetrics & Gynecology 1291 (2012) 14

Planned Parenthood Fed'n of Am., *IUD*, http://www.plannedparenthood.org/health-topics/birth-control/iud-4245.htm 12

Debbie Postlethwaite et al., *A Comparison of Contraceptive Procurement Pre- and Post-Benefit Change*, 76 Contraception 360 (2007) 15

A. Salganikoff, Kaiser Family Found., *Women and Health Care in the Early Years of the Affordable Care Act* (May 2014), https://kaiserfamilyfoundation.files.wordpress.com/2014/05/8590-women-and-health-care-in-the-early-years-of-the-affordable-care-act.pdf 10

Adam Sonfield, *What Women Already Know: Documenting the Social and Economic Benefits of Family Planning*, 16 Guttmacher Pol'y Rev. 8 (2013) 18

Cass R. Sunstein, *Nudges.gov: Behavioral Economics and Regulation* (Feb. 16, 2013), *available at* http://tinyurl.com/nudgesgov 21

Page

U.S. Dep't of Health & Human Servs., *Fact Sheet: Title X Family Planning Program* (Jan. 2008), available at http://www.hhs.gov/opa/pdfs/title-x-family-planning-fact-sheet.pdf. 31

U.S. Dep't of Health & Human Servs., *Healthy People 2020: Family Planning*, http://healthypeople.gov/2020/topicsobjectives2020/overview.aspx?topicId=13 (last visited Feb. 14, 2016) 11

U.S. Dep't of Labor, *May 2014 National Occupational Employment and Wage Estimates United States*, http://www.bls.gov/oes/current/oes_nat.htm 13

Julie Vogtman & Karen Schulman, Nat'l Women's Law Ctr., *Set Up to Fail: When Low-Wage Work Jeopardizes Parents' and Children's Success, available at* http://nwlc.org/wp-content/uploads/2016/01/final_nwlc_2016_kelloggReport.pdf 35

Women's Research & Educ. Inst., *Women's Health Insurance Costs and Experiences* (1994) 15

INTEREST OF *AMICI CURIAE*[1]

Amicus The National Women's Law Center is a non-profit legal advocacy organization dedicated to the advancement and protection of women's legal rights and opportunities since its founding in 1972. The Center focuses on issues of key importance to women and their families, including economic security, employment, education, health, and reproductive rights, with special attention to the needs of low-income women. Because access to contraception is of tremendous significance to women's health, equality, and economic security, the Center seeks to ensure that women receive the full benefits of seamless access to no-cost contraceptive coverage as intended by the Affordable Care Act, and has participated as *amicus* in this Court and the lower courts in numerous cases that affect this right.

This brief is also submitted on behalf of sixty-eight additional organizations listed in the Appendix to this brief. Other *amici curiae* are organizations committed to obtaining economic security and equality for women, including by ensuring that they have full and equal health coverage, including contraceptive coverage without cost-sharing as guaranteed by the Affordable Care Act.

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1. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission. All parties consented to the filing of this brief. *Amici* are not publicly-held corporations, they have no parent corporation, and no publicly held corporation owns 10% or more of any *amicus* organization's stock.

BACKGROUND AND SUMMARY OF ARGUMENT

Contraception is an important part of preventive health care for women. Contraception allows women to plan, delay, space, and limit pregnancies, helping to avoid negative health impacts on women and children; it is critical for women with underlying medical conditions that would be further complicated by pregnancy, and it has other health benefits unrelated to preventing pregnancy. Contraception also allows women to further their educational and career goals, thereby advancing their economic and social equality.

But women have not always been able to access contraception or the particular method they need due to cost or other barriers. To protect women's health, ensure that women do not pay more for insurance coverage than men, and advance women's equality and well-being, the Patient Protection and Affordable Care Act ("ACA") and implementing regulations require all new insurance plans to cover "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity" without cost-sharing requirements (the "contraception regulations"). *See* 42 U.S.C. § 300gg-13(a)(4); 45 C.F.R. § 147.130 (2013)(a)(1)(iv); Health Res. & Servs. Admin., U.S. Dep't of Health & Human Servs., *Women's Preventive Services Guidelines*, http://www.hrsa.gov/womensguidelines ("HRSA Guidelines") (last visited Feb. 14, 2016).

Implementing regulations exempt churches and other houses of worship from this requirement. *See* 45 C.F.R. § 147.131. The regulations accommodate non-profit

entities that have religious objections to contraception and meet certain criteria (the "accomodation").[2] Under the regulations, the non-profit entity can exclude coverage of contraception in the employer-sponsored or student health plan if it certifies that it meets the eligibility criteria and shares a copy of the certification with its insurance issuer or notifies the Department of Health and Human Services in writing. Its insurance issuer then fulfills its existing legal obligation by separately providing payments for contraceptive services. *Id.* § 147.131(c).[3] Petitioners are various non-profit organizations that qualify for the accommodation. Despite the fact that they are not required to cover contraception in their group health insurance plans, Petitioners claim that the accommodation violates their rights under the Religious Freedom Restoration Act ("RFRA"). RFRA provides that the Government "shall not substantially burden a person's exercise of religion" unless the burden "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(a)-(b).

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2. An "eligible organization" is one that "opposes providing coverage for some or all of any contraceptive items or services required to be covered. . . on account of religious objections" and "is organized and operates as a nonprofit entity and holds itself out as a religious organization." 45 C.F.R. § 147.131(b)(1)-(2). After this Court's decision in *Burwell* v. *Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), the accommodation was extended to certain for-profit companies. *See* 45 C.F.R. § 147.131(b)(4).

3. In the case of a self-insured employer that opts out, the contraception regulations designate the third party administrator as the plan "administrator" with sole legal responsibility for providing the contraceptive coverage. *See* Gov't Br. at 16.

This Court should find that Petitioners' RFRA challenges have no merit. The accommodation does not substantially burden religious exercise, as seven of the eight federal circuit courts of appeals to consider the question have held.[4] Thus, this Court need not reach the additional questions of whether the regulations further compelling interests and use the least restrictive means to advance those interests. If the Court were to reach those questions, however, as *amici* demonstrate below, it should find that Petitioners' claims fail.

First, the contraception regulations further the compelling governmental interest in "providing health insurance coverage that is necessary to protect the health of female employees, coverage that is significantly more costly than for a male employee." *Hobby Lobby*, 134 S. Ct. at 2785-86 (Kennedy, J., concurring). Contraception is necessary to prevent and ameliorate certain health conditions and is critically important for women for whom pregnancy is contraindicated. As important, contraception allows women to plan and space their pregnancies and is highly effective at reducing unintended pregnancy, which,

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4. *See Catholic Health Care Sys.* v. *Burwell*, 796 F.3d 207, 226 (2d Cir. 2015) (holding that the challenged accommodation poses no substantial burden); *Little Sisters of the Poor Home* v. *Burwell*, 794 F.3d 1151, 1180 (10th Cir. 2015) (same); *East Texas Baptist Univ.* v. *Burwell*, 793 F.3d 449, 459 (5th Cir. 2015) (same); *Univ. of Notre Dame* v. *Burwell*, 786 F.3d 606, 624 (7th Cir. 2015) (same); *Geneva Coll.* v. *U.S. Secretary of Health and Human Services*, 778 F.3d 422, 441 (3rd Cir. 2015) (same); *Priests for Life* v. *U.S. Dep't of Health and Human Servs.*, 772 F.3d 229, 237, 256 (D.C. Cir. 2014) (same); *see also Michigan Catholic Conference & Catholic Family Servs.* v. *Burwell*, 755 F.3d 372, 390 (6th Cir. 2014) (same), *vacated sub nom.* No. 14-701, 2015 WL 1879768 (U.S. Apr. 27, 2015).

as numerous studies have shown and experts agree, can have negative health consequences for both women and children. The contraception regulations further the Government's compelling interests by eliminating the barriers to contraception use, including costs that previously deterred women from using contraceptives consistently or using the most appropriate and effective forms of contraception for their circumstances.

Before the advances of the ACA, including the contraception regulations, women paid significantly more than men for health insurance that did not meet their needs. The out-of-pocket costs associated with contraceptive care and related services contributed to this disparity. The contraception regulations advance the Government's compelling interest in ending this gender discrimination by ensuring that health insurance covers women's needs and women no longer pay more for health care than men. The contraception regulations also enable women to control their reproductive lives, providing them equal opportunities to participate in society, achieve their educational and career goals, and remain economically secure. The contraception regulations promote these compelling interests for women generally and specifically for the women affected in the cases before this Court.

Second, this Court held in *Hobby Lobby* that the accommodation is a less restrictive means of furthering the Government's compelling interest than the direct application of the contraceptive coverage requirement in that case. The accommodation "seeks to respect the religious liberty of religious nonprofit corporations while ensuring that the employees of these entities have precisely the same access to all FDA-approved contraceptives as

employees of companies whose owners have no religious objections to providing such coverage." *Hobby Lobby*, 134 S. Ct. at 2759.

Petitioners do not demonstrate that their proposed alternatives are a less restrictive means of furthering the Government's compelling interest as effectively as the accommodation. Each alternative, in fact, undermines the Government's interests. Petitioners' alternatives remove contraception from a woman's regular insurance system, and impose additional administrative, logistical, and monetary burdens that would make it difficult, if not impossible, for women to access contraception.

These alternatives would allow Petitioners' exercise of religion to unduly restrict the ability of their female employees, students, and beneficiaries to access guaranteed and necessary health care services. This would render women working for objecting employers worse off than their male colleagues and women working for non-objecting employers. This result is not permitted by this Court's precedents, including *Hobby Lobby*.

Because the accommodation serves the Government's compelling interest by the least restrictive means available and Petitioners' alternatives would thwart the compelling interest and burden the affected women, Petitioners' claims should fail.

ARGUMENT

I. THE CONTRACEPTION REGULATIONS ADVANCE COMPELLING GOVERNMENT INTERESTS BECAUSE THEY PROTECT WOMEN'S HEALTH AND PROMOTE GENDER EQUALITY.

The Court in *Hobby Lobby* assumed that the contraception regulations advance a compelling government interest. *See* 134 S. Ct. at 2780. Five Justices of this Court have affirmed that the contraception regulations advance a compelling interest in women's health and well-being. "It is important to confirm the premise of the Court's opinion is its assumption that the HHS regulation here at issue furthers a legitimate and compelling interest in the health of female employees." *Hobby Lobby*, 134 S. Ct. at 2786 (Kennedy, J., concurring). "[T]he Government has shown that the contraceptive coverage for which the ACA provides furthers compelling interests in public health and women's well being. Those interests are concrete, specific, and demonstrated by a wealth of empirical evidence." *Id.* at 2799 (Ginsburg, J., dissenting).

Both of the circuit courts of appeals to consider the question of whether the accommodation furthers a compelling interest after this Court's *Hobby Lobby* decision agreed. *See Priests for Life* v. *Burwell*, 772 F.3d 229, 264 (D.C. Cir. 2014) ("[T]he accommodation is supported by the government's compelling interest in providing women full and equal benefits of preventive health coverage, including contraception."); *see also Univ. of Notre Dame* v. *Burwell*, 786 F.3d 606, 624 (7th Cir.

2015) ("*Hobby Lobby* now shows that the government has a strong argument on the compelling-interest issue. . . . The compelling interests include women's health, the role that access to contraception plays in enabling women to participate fully and equally in society, and significant cost savings.").

These findings are consistent with this Court's prior decisions, which have recognized that the Government has a compelling interest in public health and gender equality in other contexts. *See Prince* v. *Massachusetts*, 321 U.S. 158, 165-68 (1944) (upholding child labor laws against free exercise challenge on health and welfare grounds); *see also Bd. of Dirs. of Rotary Int'l* v. *Rotary Club of Duarte*, 481 U.S. 537, 549 (1987) (recognizing "State's compelling interest in eliminating discrimination against women"); *Roberts* v. *U.S. Jaycees*, 468 U.S. 609, 625-26 (1984) (finding that state law forbidding gender discrimination in public accommodations did not unconstitutionally burden First Amendment right of expressive association); *Jacobson* v. *Massachusetts*, 197 U.S. 11, 25 (1905) (upholding mass vaccination program against constitutional challenge based on health and welfare grounds). This Court has recognized on several occasions "the importance, both to the individual and to society, of removing the barriers to economic advancement and political and social integration that have historically plagued certain disadvantaged groups, including women" and has thus found that "[a]ssuring women equal access to [] goods, privileges, and advantages clearly furthers compelling state interests." *Roberts*, 468 U.S. at 626; *see also United States* v. *Virginia*, 518 U.S. 515, 532 (1996) (noting a violation of fundamental principles when "women, simply because they are women[,]" are denied the "equal opportunity to

aspire, achieve, participate in and contribute to society based on their individual talents and capacities"); *Bd. of Dirs. of Rotary Int'l* v. *Rotary Club of Duarte*, 481 U.S. 537, 549 (1987) (recognizing "State's compelling interest in eliminating discrimination against women").

A. The Government Has a Compelling Interest in Protecting and Promoting Women's Health.

That contraception is essential to public health is borne out by substantial evidence—it has specific health benefits for women and also confers health benefits on women and children by allowing pregnancies to be delayed, planned, and spaced. Yet prior to the contraception regulations, the out-of-pocket costs associated with contraception hampered the realization of those benefits.

1. Contraception Advances the Health of Women and Children.

It is well-established that contraception is highly effective in treating and preventing certain health conditions. Contraception treats menstrual disorders, reduces the risks of certain cancers, such as endometrial and ovarian cancer, and helps protect against pelvic inflammatory disease. *See* Inst. Of Med., *Clinical Preventive Services for Women: Closing the Gaps* 92 (2011), *available at* http://www.iom.edu/reports/2011/clinical-preventive-services-for-women-closing-the-gaps.aspx (last visited Feb. 9, 2016) ("IOM Rep.").

In addition, pregnancy may be dangerous to some women due to certain chronic medical conditions, such as diabetes and obesity. If a woman suffers from these

conditions, it may be advisable for her to postpone pregnancy until her health stabilizes. *See id.* at 103. For women with serious medical conditions like pulmonary hypertension and cyanotic heart disease, pregnancy may also be contraindicated. *Id.* at 103-04.

Indeed, in a nationally representative study conducted in 2013, twenty-one percent of women said they used contraceptives to prevent pregnancy and manage a medical condition, while seven percent used contraceptives solely to manage a medical condition. *See* A. Salganikoff, Kaiser Family Found., *Women and Health Care in the Early Years of the Affordable Care Act* 35 (May 2014), https://kaiserfamilyfoundation.files.wordpress.com/2014/05/8590-women-and-health-care-in-the-early-years-of-the-affordable-care-act.pdf.

Women may also need contraception to prevent or delay pregnancy in other circumstances related to public health. For example, women in certain South and Central American countries are being asked to delay or avoid pregnancy to prevent harmful effects the Zika virus is believed to have on a developing fetus. *See* Debra Goldschmidt, *CDC Expands Zika Virus Alert; More Countries Issue Pregnancy Warnings*, CNN, Jan. 22, 2016, http://www.cnn.com/2016/01/22/health/new-zika-warnings/. The Centers for Disease Control and Prevention recently encouraged American women to consult with their health care providers before traveling to certain South and Central American countries if they are contemplating pregnancy because of the spread of the Zika virus. *See* Ctrs. for Disease Control & Prevention, *Question and Answers: Zika Virus Infection (Zika) and Pregnancy*, http://www.cdc.gov/zika/pregnancy/question-answers.html (last updated Feb. 12, 2016).

Contraception is also necessary to prevent unintended pregnancy, which can have severe negative health consequences for both women and resulting children. During an unintended pregnancy, a woman is more likely to receive delayed or no prenatal care, to be depressed, and to suffer from domestic violence. *See* IOM Rep. at 103; *see also* U.S. Dep't of Health & Human Servs., *Healthy People 2020: Family Planning*, http://healthypeople.gov/2020/topicsobjectives2020/overview.aspx?topicId=13 (last visited Feb. 14, 2016) ("*Healthy People 2020*") (describing the above and additional risks of unintended pregnancy). An unintended pregnancy may result in preterm birth and low birth weight among children. *See* IOM Rep. at 103; *see also* Cassandra Logan et al., *The Consequences of Unintended Childbearing: A White Paper*, 5-7 (May 2007), http://thenationalcampaign.org/sites/default/files/resource-primary-download/consequences.pdf (discussing health implications of unintended pregnancy for the children, including poor physical and mental health, a less close mother-child relationship, and poorer educational outcomes).

Because unintended pregnancies comprise nearly half of all pregnancies in the United States, addressing the high unintended pregnancy rate has been deemed a national objective by the Department of Health and Human Services. *See Healthy People 2020.* These efforts are particularly critical for women of color, as "[r]ates of unintended pregnancy and unintended birth among minority women were more than twice the rates for White women." Lawrence B. Finer & Mia R. Zolna, *Shifts in Intended and Unintended Pregnancies in the United States, 2001–2008*, 104 Am. J. Pub. Health S43, S47 (2014).

Yet unintended pregnancies need not be so prevalent in the United States because contraception is highly

effective in preventing them. For example, intrauterine devices (IUDs), female sterilization, and contraceptive implants have a failure rate of 1% or less in the first 12 months—as compared with an 85% chance of pregnancy within 12 months with no contraception. *See* IOM Rep. at 105.

2. The Costs Associated with Contraception Impede These Important Health Benefits.

Cost is an impediment to women using contraception at all or choosing the more effective—but more expensive—methods of contraception.

The most effective methods of contraception carry large up-front costs that make them unaffordable for many women. For example, the IUD can cost up to $1,000. *See* Planned Parenthood Fed'n of Am., *IUD*, http://www.plannedparenthood.org/health-topics/birth-control/iud-4245.htm (last visited Feb. 14, 2016). Other methods—including injectable contraceptives, transdermal patches, and the vaginal ring—cost women between $2,300 and $2,800 over a five-year period. James Trussell et al., *Erratum to "Cost Effectiveness of Contraceptives in the United States" [Contraception 79 (2009) 5-14]*, 80 Contraception 229, 229 (2009). Oral contraception costs women, on average, $2,630 over five years. *Id.* These costs can be difficult for all women to bear, but are particularly burdensome for those with low wages or who are living in poverty.[5]

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5. "The research consistently demonstrates that the low-income population is particularly sensitive to out-of-pocket costs—enrollment in health plans declines steeply as premiums increase

Some of Petitioners' employees, such as aides, could be making less than $12 an hour. U.S. Dep't of Labor, *May 2014 National Occupational Employment and Wage Estimates United States*, http://www.bls.gov/oes/current/oes_nat.htm (last modified Mar. 25, 2015) (listing the national median hourly wage for "Nursing, Psychiatric, and Home Health Aides" as $11.33). If a woman works full time, year round at $12 per hour, her monthly pre-tax earnings are $2,000—earnings that fall short of the amount needed to cover typical monthly expenses such as housing, food, transportation, health care costs, and other expenses. *See* Elise Gould et al., Econ. Policy Inst., *What Families Need to Get By: EPI's 2015 Family Budget Calculator* fig. A (Aug. 26, 2015), http://www.epi.org/publication/what-families-need-to-get-by-epis-2015-family-budget-calculator/ (showing that a single person in Des Moines, Iowa—the median family budget area for a two-parent, two-child family—has $2,236 in monthly expenses). This shortfall means she cannot meet her basic needs and, when faced with out-of-pocket costs for contraception starting even at $10, she may find that she cannot pay for this critical health care.

Studies show that these costs associated with contraception lead women to forego it completely, choose less effective methods, or use it inconsistently

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and even low levels of cost-sharing can have adverse effects on use of health care services and health outcomes." Julie Hudman & Molly O'Malley, Kaiser Comm'n on Medicaid & the Uninsured, *Health Insurance Premiums and Cost Sharing: Findings from the Research on Low-Income Populations* 2 (Mar. 2003), https://kaiserfamilyfoundation.files.wordpress.com/2013/01/health-insurance-premiums-and-cost-sharing-findings-from-the-research-on-low-income-populations-policy-brief.pdf.

or incorrectly. *See, e.g.*, Guttmacher Inst., *A Real-Time Look at the Impact of the Recession on Women's Family Planning and Pregnancy Decisions* 5 (Sept. 2009), http://www.guttmacher.org/pubs/RecessionFP.pdf (finding that to save money, women forewent contraception, skipped birth control pills, delayed filling prescriptions, went off the pill for at least a month, or purchased fewer birth control packs at once). Accordingly, the costs of contraception can create a significant risk of unintended pregnancy, as "even a brief gap in [contraceptive] method use can have a major impact." Rachel Benson Gold, *The Need for and Cost of Mandating Private Insurance Coverage of Contraception*, 1 Guttmacher Rep. on Pub. Pol'y 5, 6 (1998).

Eliminating cost barriers to contraception and providing education and counseling about the available methods can greatly improve use and reduce unintended pregnancy. For example, one study found a "clinically and statistically significant reduction" in unintended pregnancies when at-risk women received contraceptive counseling and reversible contraceptive methods of their choice at no cost. Jeffrey F. Peipert et al., *Preventing Unintended Pregnancies by Providing No-Cost Contraception*, 120 Obstetrics & Gynecology 1291, 1291 (2012); *see also* Nat'l Bus. Grp. on Health, *Investing in Maternal and Child Health: An Employer's Toolkit* pt. 4 at 12, 37-38 (2007), *available at* http://www.businessgrouphealth.org/pub/f3004374-2354-d714-5186-b5bc1885758a (advising employers to cover "comprehensive contraceptive coverage" and eliminate cost sharing to help prevent unintended pregnancies). Another study found that when out-of-pocket costs for contraceptives were eliminated or reduced, their use—

particularly of the most effective forms of contraception—increased, and the estimated annual contraceptive failure rate decreased. *See* Debbie Postlethwaite et al., *A Comparison of Contraceptive Procurement Pre- and Post-Benefit Change*, 76 Contraception 360, 360, 363 (2007).

In other words, reducing the cost barriers to contraception is key to reducing unintended pregnancy, and therefore the Government's compelling interest in promoting health. As the Institute of Medicine explained when it recommended the inclusion of contraception among the women's preventive services to be covered, "[t]he elimination of cost sharing for contraception therefore could greatly increase its use, including use of the more effective and longer-acting methods, especially among poor and low-income women most at risk for unintended pregnancy." IOM Rep. at 109.

B. The Government Has a Compelling Interest in Promoting Gender Equality.

The contraception regulations remedy inequities in health care coverage, which impose costs primarily on women. The historical failure to cover women's health needs to the same extent as men's meant that women paid more in out-of-pocket costs and disproportionately bore the burden of health care expenditures. *See* IOM Rep. at 18-19. Women of childbearing age spent 68% more in out-of-pocket health care costs than men. Gold, *supra*, at 5; *see also* Women's Research & Educ. Inst., *Women's Health Insurance Costs and Experiences* 2 (1994) (noting that women of childbearing age have higher out-of-pocket health care expenditures than their

male contemporaries and that women spend a larger portion of their income on out-of-pocket expenditures than men). The cost of contraception contributed to this disparity. One study estimated that "the annual out-of-pocket expenditures for uninsured women who obtained 13 cycles [of oral contraception] at a median cost per pack would be $370, which represents a substantial proportion (68%) of their median annual out-of-pocket total health care expenditures ($541)." Su-Ying Liang et al., *Women's Out-Of-Pocket Expenditures and Dispensing Patterns for Oral Contraceptive Pills Between 1996 and 2006*, 83 Contraception 528, 534 (2011).

The impact of these higher health care costs is magnified by women's lower incomes. Women earn, on average, 79 cents for every dollar earned by men. *See* Carmen DeNavas-Walt & Bernadette D. Proctor, U.S. Census Bureau, *Income and Poverty in the United States: 2014*, at 7 (Sept. 2015), http://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf. Women of color earn even less.[6] Pay inequity holds true even in low-wage occupations, where women are over-represented and still are typically paid 15% less than their male counterparts. Anne Morrison & Katherine Gallagher Robbins, Nat'l Women's Law Ctr., *Women's Overrepresentation in Low-Wage Jobs* 1, 8 (Oct. 2015), *available at* http://www.nwlc.org/sites/default/files/pdfs/chartbook_womens_overrepresentation_in_low-wage_jobs.pdf. Moreover, women, particularly women of color,

6. For every dollar earned by white, non-Hispanic men, African American women earn 60 cents, while Hispanic women earn 55 cents. Nat'l Women's Law Ctr., *FAQ About the Wage Gap* 2 (Sept. 2015), *available at* http://nwlc.org/wp-content/uploads/2015/08/faq_about_the_wage_gap_9.23.15.pdf.

are more likely to be poor than men, thus increasing the likelihood that women will face cost barriers to accessing needed health care. *See* Alana Eichner & Katherine Gallagher Robbins, Nat'l Women's Law Ctr., *National Snapshot: Poverty Among Women & Families, 2014*, 1 (Sept. 2015), *available at* http://www.nwlc.org/sites/default/files/pdfs/povertysnapshot2014.pdf. Requiring insurance coverage of contraception without cost-sharing helps ensure that women do not continue to face a health insurance gap alongside this income gap.

Access to contraception also promotes gender equality by improving women's ability to control whether and when to have a child, which allows women to participate in education and the workforce on equal footing with men. As this Court recognized, "[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives." *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 856 (1992). Contraception has allowed women to pursue educational and professional opportunities that would otherwise be unavailable to them. In fact, "[e]conomic analyses have found clear associations between the availability and diffusion of oral contraceptives, particularly among young women, and increases in US women's education, labor force participation, and average earnings, coupled with a narrowing in the wage gap between women and men." Jennifer J. Frost & Laura Dubertstein Lindberg, Guttmacher Inst., *Reasons for Using Contraception: Perspectives of US Women Seeking Care at Specialized Family Planning Clinics*, 87 Contraception 465, 465 (2013). Another study concludes that the advent of oral contraceptives contributed to an increase in the number

of women employed in professional occupations, including as doctors and lawyers. *See* Claudia Goldin & Lawrence F. Katz, *The Power of the Pill: Oral Contraceptives and Women's Career and Marriage Decisions*, 110 J. Pol. Econ. 730, 758-62 (2002).

The link between contraception and women's economic security and future opportunities is widely recognized by women. In one study, when asked why they use contraceptives, a majority of women reported that "over the course of their lives, access to contraception had enabled them to take better care of themselves or their families, support themselves financially, complete their education, or get or keep a job." Adam Sonfield, *What Women Already Know: Documenting the Social and Economic Benefits of Family Planning*, 16 Guttmacher Pol'y Rev. 8, 8 (2013); *see also* Frost & Lindberg, *supra*, at 467 (study reporting that a majority of women consider the ability to better control their lives a very important reason for using contraception).

C. The Contraception Regulations Further These Compelling Government Interests.

Requiring contraceptive coverage alongside other preventive health services without cost-sharing through a woman's regular insurance system furthers the Government's compelling interests in promoting women's health and equality.[7]

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7. Petitioners' argument that exceptions to complying with the contraception regulations undermine a finding that the contraception regulations serve a compelling interest is without merit. As the D.C. Circuit has held, "[t]he government's interest in a comprehensive, broadly available system is not undercut by the other exemptions

Indeed, Congress intended the Women's Health Amendment to help alleviate the "punitive practices of insurance companies that charge women more and give [them] less in a benefit" and to "end the punitive practices of the private insurance companies in their gender discrimination." 155 Cong. Rec. S12,021, S12,026 (daily ed. Dec. 1, 2009) (statement of Sen. Mikulski); *see also id.* at S12,030 (statement of Sen. Dodd) ("I support the effort by Senator Mikulski on her efforts to see to it that women are treated equally, and particularly in preventive care[.]"). In enacting the Amendment, Congress recognized that the failure to cover women's preventive health services meant that women paid more in out-of-pocket costs than men for necessary preventive care and in some instances were unable to obtain this care at all because of cost barriers:

> Women must shoulder the worst of the health care crisis, including *outrageous discriminatory practices in care and coverage*. . . . In America today, too many women are delaying or skipping preventive care because of the costs of copays and limited access. In fact, more than half of women delay or avoid preventive care because of its cost. *This fundamental inequity in the current system is dangerous and discriminatory and we must act.*

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in the ACA, such as the exemptions for religious employers, small employers, and grandfathered plans. The government can have an interest in the uniform application of a law, even if that law allows some exceptions. *See, e.g.*, [*United States* v.] *Lee*, 455 U.S. [252, 261 (1982)]. In any event, the exemptions to the ACA are limited and the rationales that support them do not extend to exempting Plaintiffs." *Priests for Life*, 772 F.3d at 266.

Id. at S12,027 (statement of Sen. Gillibrand) (emphases added).

In considering the Amendment, Congress expressed its expectation that the HRSA Guidelines would incorporate family planning services. *See, e.g., id.* ("With Senator Mikulski's amendment, even more preventive screening will be covered, including for . . . family planning."); 155 Cong. Rec. S12,033, S12,052 (daily ed. Dec. 1, 2009) (statement of Sen. Franken) ("[A]ffordable family planning services must be accessible to all women in our reformed health care system."); 155 Cong. Rec. S12,106, S12,114 (daily ed. Dec. 2, 2009) (statement of Sen. Feinstein) ("[The Amendment] will require insurance plans to cover at no cost basic preventive services and screenings for women. This may include . . . family planning . . . ."). The Department of Health and Human Services—in adopting the Institute of Medicine's recommendations and promulgating the contraception regulations—carried out Congress' direction.[8]

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8. To meet the Amendment's objectives, the Department of Health and Human Services commissioned the Institute of Medicine ("IOM") "to convene a diverse committee of experts in disease prevention, women's health issues, adolescent health issues, and evidence-based guidelines to review existing guidelines, identify existing coverage gaps, and recommend services and screenings for [the Department of Health and Human Services] to consider in order to fill those gaps." IOM Rep. at 20-21. After conducting its analysis, the IOM panel recommended eight preventive services for women, including contraceptive coverage. *Id.* at 109-10. On August 1, 2011, HRSA adopted the recommendations set forth in the IOM Report. *See* Health Res. & Servs. Admin., U.S. Dep't of Health & Human Servs., *Women's Preventive Services Guidelines*, http://www.hrsa.gov/womensguidelines (last visited Feb. 15, 2016).

The contraception regulations eliminate the cost barriers that deter women from choosing the most appropriate and effective method of contraception or keep women from using contraception altogether. The contraception regulations also ensure seamless access to contraception by requiring the provision of contraceptive coverage through a woman's regular health insurance system. This guarantees that she will not have to search for critical contraception services through another system, avoiding barriers that could prevent her from obtaining contraception. Studies have shown that even seemingly minor barriers can be a deterrent. *See, e.g.*, IOM Rep. at 19 (noting that "even moderate copayments for preventive services" deter women from receiving those services); Cass R. Sunstein, *Nudges.gov: Behavioral Economics and Regulation* 3 (Feb. 16, 2013), *available at* http://tinyurl.com/nudgesgov (finding that removing administrative burdens imposed by paperwork increases participation in benefits programs).

As the Court recognized in *Hobby Lobby*, the accommodation "achieves all of the government's aims" and ensures that the "plaintiffs' female employees would continue to receive contraceptive coverage without cost sharing for all FDA-approved contraceptives, and they would continue to 'face minimal logistical and administrative obstacles' because their employers' insurers would be responsible for providing information and coverage." 134 S. Ct. at 2759, 2782 (quoting *id.* at 2802 (Ginsburg, J., dissenting)).

II. THE ACCOMMODATION IS THE LEAST RESTRICTIVE MEANS AVAILABLE FOR ADVANCING THE GOVERNMENT'S COMPELLING INTERESTS.

Under RFRA's least restrictive means test, Petitioners' proposed alternatives must be "as effective[]" as the regulation being challenged. *See Hobby Lobby*, 134 S. Ct. at 2782. If proposed alternatives "less effective[ly]" advance the Government's compelling interests, the Government's existing regulatory scheme must prevail. *See Gonzales* v. *O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006). The Government does not have to "do the impossible"—that is, it need not "refute each and every conceivable alternative regulation scheme." *United States* v. *Wilgus*, 638 F.3d 1274, 1289 (10th Cir. 2011). Rather, the Government must "support its choice of regulation, and it must refute the alternative schemes offered by the challenger." *Id.* Thus, the judicial inquiry is a limited one—RFRA "is not an open-ended invitation to the judicial imagination." *Id.*

Additionally, when considering whether alternatives Petitioners propose satisfy the least restrictive means prong, the harm to third parties (here, the female employees, students, and beneficiaries of Petitioners) is a critical factor. *See, e.g.*, *Hobby Lobby*, 134 S. Ct. at 2781 n.37 ("It is certainly true that in applying RFRA 'courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries.'") (quoting *Cutter* v. *Wilkinson*, 544 U.S. 709, 720 (2005)); *see also id.* at 2760 ("we certainly do not hold or suggest that RFRA demands accommodation . . . no matter the impact that accommodation may have on . . . thousands of women

employed by Hobby Lobby." (internal quotation marks and alterations omitted)). Indeed, respecting religious exercise may not "unduly restrict other persons, such as employees, in protecting their own interests, interests the law deems compelling." *Id.* at 2787 (Kennedy, J., concurring); *see also Estate of Thornton* v. *Caldor, Inc.*, 472 U.S. 703, 709 (1985) (holding that statute providing Sabbath observers with an absolute right not to work on the Sabbath violated the Establishment Clause because it "impose[d] on employers and employees an absolute duty to conform their business practices to the particular religious practices of the employee"); *United States* v. *Lee*, 455 U.S. 252, 261 (1982) (rejecting employer's claim that imposition of social security taxes violated his free exercise rights, noting that granting the employer an exemption "impose[s] the employer's religious faith on the employees").

In *Hobby Lobby*, this Court recognized the accommodation as a less restrictive alternative to requiring that employers like Hobby Lobby provide insurance coverage of contraception in the employer-sponsored plan. It was crucial to the Court that the accommodation ensures that affected employees "have *precisely the same access* to all FDA-approved contraceptives as employees of companies whose owners have no religious objections to providing such coverage." *Hobby Lobby*, 134 S. Ct. at 2759 (Alito, J.) (emphasis added). In other words, the effect of the accommodation on women would be "precisely zero." *Id.* at 2760; *see also id.* at 2782 (finding that there is "no reason why this accommodation would fail to protect the asserted needs of women as effectively as the contraceptive mandate"). Indeed, the accommodation offered "an existing, recognized, workable, and already-

implemented framework to provide coverage" that "equally furthers the Government's interest but does not impinge on the plaintiffs' religious beliefs." *Id.* at 2786 (Kennedy, J., concurring).

A. Petitioners' Proposed Alternatives Would Not As Effectively Advance the Government's Compelling Interests, Would Reinstate Barriers, and Would Unduly Infringe on Women.

In suggesting alternatives to the accommodation, Petitioners propose that the Government (1) "offer [the affected women] the opportunity to sign up for separate, contraceptive-only health plans"; (2) allow Petitioners' employees and students to "sign up for subsidized health plans on the existing network of ACA exchanges"; (3) "give tax incentives to contraception suppliers to provide these medications and services at no cost to consumers, or give tax incentives to consumers so they would not have to bear the cost of contraceptives"; (4) "use some other public option to provide contraception insurance" or expand the Title X program to "make grants to and enter into contracts with public and nonprofit private entities to ensure [access to] free contraception services." *Zubik* Br. at 75-82 (internal quotation marks and citations omitted); *see also Little Sisters* Br. at 72-75 (discussing similar proposals).

Petitioners fail to demonstrate that the proposed alternatives are "as effective[]" as the accommodation. *See Hobby Lobby*, 134 S. Ct. at 2782. Rather, the proposed alternatives undermine the compelling interests by imposing serious disadvantages on the

affected women, a result disapproved by *Hobby Lobby*. *See id.* at 2761 ("Nor do we hold, as the dissent implies, that [plaintiffs] have free rein to take steps that impose disadvantages . . . on others . . . ." (internal quotation marks and alterations omitted)). As an initial matter, all of the proposed alternatives force women to go outside their existing insurance systems and network of health care providers to obtain contraceptive care. These alternatives would "at a minimum, make [contraceptive] coverage no longer seamless from the beneficiaries' perspective, instead requiring them to take additional steps to obtain contraceptive coverage elsewhere" or "deny the contraceptive coverage altogether." *Priests for Life*, 772 F.3d at 245; *see also Notre Dame*, 786 F.3d at 618 ("All of Notre Dame's suggested alternatives would impose significant financial, administrative, and logistical obstacles by requiring women to sign up for separate coverage either with a government agency or with another private insurer."). Petitioners' alternatives would require "telling the students and employees to find their own insurance through government-run health exchanges or arranging coverage itself . . . [and] would 'involve cumbersome administrative machinery and at the same time impose a burden on [the] female students and employees who want to obtain contraceptives.'" *Wheaton Coll.* v. *Burwell*, 791 F.3d 792, 798 (7th Cir. 2015) (quoting *Notre Dame*, 786 F.3d at 617); *see also Priests for Life*, 772 F.3d at 245 ("The relief Plaintiffs seek here . . . would hinder women's access to contraception.").

Under Petitioners' proposals, the affected women would have to incur significant costs—monetary, logistical, and administrative—to access care fundamental to their health. This would reinstate many of the obstacles that

the Women's Health Amendment and the contraception regulations were designed to remedy. Moreover, each proposal would leave the affected women in a worse position than both the men who work alongside them and women who work for non-objecting employers. This is not "precisely the same access" approved by the Court when it considered the accommodation in *Hobby Lobby*. We address each of the Petitioners' proposed alternatives in turn.

1. Contraception-only health plans

Petitioners' first proposal that women pay for "separate, contraceptive-only health plans" is fundamentally flawed because no such insurance product exists, either on the ACA marketplaces or elsewhere in the private insurance market.[9] Even if such a product existed, it would require women to pay out of pocket to enroll in such a plan, reinstating the cost barriers the contraception regulations were meant to address and possibly costing more than paying out of pocket for contraception in the first place. Moreover, it would remove contraception from a woman's otherwise comprehensive insurance system, treating contraception differently from all other health services and forcing her to navigate a new network of providers and insurance company policies to obtain one critical health care service.

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9. As the Government discusses in its brief, contraceptive-only plans cannot exist in the ACA marketplaces because, by law, only qualified health plans providing comprehensive coverage can be offered. *See* Gov't Br. at 82-83.

2. Sending affected women into the ACA marketplace

Petitioners' proposal to force women to purchase health plans on the ACA marketplaces is similarly flawed and would not result in "precisely the same access." Instead, it would force an affected woman out of her employer-sponsored insurance plan altogether, meaning that she could no longer turn to her human resources department for assistance in understanding her plan coverage or resolving any coverage issues. She would also be excluded from the simple process that her coworkers use to sign up for employer-based insurance and instead be forced to take significant additional time to search for, compare, and analyze plans on the marketplace. The marketplace may offer less robust coverage than her employer-sponsored plan and may include higher deductibles or cost sharing. She would then be forced to choose between an employer-based plan that does not cover contraception or a marketplace plan that provides less coverage for other health care needs.

Beyond these burdens, a woman forced out of her employer-based insurance faces monetary penalties. Because employer-based health insurance is part of an employee's compensation package, an affected woman will be compensated less than her coworkers who do not need contraceptive coverage. This disadvantage—which would only compound pay inequities that already exist for women—could then be amplified by premium costs a woman may face when she goes into the marketplace. An affected woman would not be eligible for federal financial assistance to help with premiums, meaning that she would

have to pay the entire premium out-of-pocket.[10] Even if she were to qualify for subsidies, the premium might be higher than what she would have paid for her employer-sponsored plan, since most employers contribute to the coverage they provide. An affected woman would have to choose between employer-sponsored insurance without the contraceptive coverage she needs or losing a part of her compensation and paying more for the coverage that includes contraception but might not meet her other health needs.

Moreover, this proposed alternative gives Petitioners a financial windfall. They would avoid providing full compensation packages to their affected employees and, because they have not suggested that they are willing to pay the tax for failing to offer comprehensive insurance to their employees,[11] in theory would not face financial repercussions. In other words, this proposed alternative would allow Petitioners to take financial advantage of a system that was not intended, developed, or designed to

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10. As the Government notes in its brief, "tax credits that (partially) subsidize coverage for the vast majority of Exchange customers are available only to individuals whose employers do *not* offer coverage." Gov't Br. at 8 (noting that there are exceptions but those exceptions would not apply if an employer fails to cover preventative services without cost-sharing). Moreover, those earning more than 400% of the federal poverty level are ineligible for premium assistance. 26 U.S.C. § 36B(b).

11. If an employer offers health insurance to its employees, but fails to comply with ACA's group health plan requirements, the employer must pay $100 per day for each affected individual. *See* 26 U.S.C. §§ 4980D(a)-(b). Additionally, an employer with fifty or more employees must pay a tax of $2,000 per employee if it does not offer health insurance coverage. *See* 26 U.S.C. § 4980H.

offer insurance to people who already have employer-sponsored coverage.

3. Tax credits to consumers or incentives to manufacturers

Petitioners' proposed provision of a tax credit or deduction based on contraception costs would require women to pay up front for their contraceptive needs. Thus, the proposal would reinstate the cost barriers that deter women from obtaining the most effective methods or from using contraception altogether. In addition, it would require women to assume the administrative burden of collecting documentation of contraceptive costs over the course of the year and substantiating these costs through their tax returns. For those women who will not have taxes due at the end of the year, the proposal might offer no benefit at all.[12] This proposal, therefore, would not only force women to pay for the up-front costs of their contraceptive care and shoulder significant administrative burdens to obtain reimbursement long after the fact, but would not even guarantee that the women would receive the funds at a later date.

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12. Whether an individual must file a federal income tax return depends on her gross income, filing status, age, and whether she is a dependent. *See* Internal Revenue Serv., Publication 501, *Exemptions, Standard Deduction, and Filing Information* 3 (2015), *available at* https://www.irs.gov/pub/irs-pdf/p501.pdf. Under some tax credit schemes, women who do not make sufficient income to file taxes would not receive the tax credit at all. Under others, the refundable tax credit might provide some women with the opportunity to recover the costs of their contraception, but only after filing a tax return that they otherwise would not have had to file. *Compare* 26 U.S.C. § 32 (creating a refundable earned income credit), *with* 26 U.S.C. § 23 (establishing a nonrefundable adoption expense credit).

Petitioners' vague suggestion that the Government "give tax incentives to contraception suppliers" to provide their products for free is equally flawed. *Zubik* Br. at 81. There is no guarantee that any manufacturer would even agree that such "incentives" were sufficient, let alone that manufacturers of all contraceptive methods would participate. In other words, this alternative would not guarantee a woman the ability to access the specific method of contraception she needs.[13]

Moreover, even if a woman were able to obtain the particular contraceptive method she needs at no cost, this program would impose logistical and administrative burdens on her—she would need to determine how to obtain the free contraceptives, including the burden of proving her eligibility.

The proposal is at odds with ensuring that affected women have "precisely the same access" to contraceptive coverage without cost-sharing.

4. Expanding public programs

As to Petitioners' proposal to expand the Title X program or some other public option, such as Medicaid,

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13. The same problems apply to the suggestion that the Government "grant credits to a network of large insurance companies" to "provide an independent, national program." *Zubik* Br. at 82. Once again Petitioners fail to explain why a "network" of insurers would agree to set up a wholly distinct "program" just to distribute contraception. They also fail to acknowledge how this "program" would provide for the provider visits and related counseling and education that is a part of a woman's contraceptive care.

this proposal is not an alternative that effectively meets the Government's compelling interests and that results in "precisely zero" effect on women. Rather, it could require many women to bear the burden of enrolling in a new government program, including demonstrating eligibility. An affected woman might be forced to locate a new provider solely for contraceptive services, losing the benefit provided by continuity of care with her preferred health care provider.[14] Additionally, women may have difficulty locating a Title X-funded provider within a reasonable distance[15] or a Medicaid provider. Each Medicaid program has its own limited set of providers, and these providers may be inaccessible to women living in certain areas. *See* 42 U.S.C. § 1396a (giving states broad discretion in designing Medicaid programs).[16] In

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14. Title X is a federal grant program overseen by the U.S. Department of Health and Human Services' Office of Population Affairs dedicated to providing low-income individuals with family planning and related preventive health services. *See* Office of Population Affairs, *Title X Family Planning*, http://www.hhs.gov/opa/title-x-family-planning/ (last visited Feb. 13, 2016). Grantees include state, county, and local health departments, community health centers, Planned Parenthood health centers, and private nonprofits. *Id.*

15. Approximately one in four U.S. counties does not have a Title X-funded provider. *See* U.S. Dep't of Health & Human Servs., *Fact Sheet: Title X Family Planning Program* (Jan. 2008), *available at* http://www.hhs.gov/opa/pdfs/title-x-family-planning-fact-sheet.pdf.

16. Congress has long recognized the importance of access to family planning in its Medicaid program by guaranteeing the right of Medicaid enrollees to choose to receive covered family planning services from any qualified provider. 42 U.S.C. § 1396a(a)(23). However, a woman put into an expanded Medicaid program in order

addition, while the need for publicly funded contraceptive care has increased in recent years,[17] the Title X program has been underfunded and overburdened for many years.[18] Requiring that an affected woman receive her contraceptive care only from an already overburdened Title X-funded provider could create difficulties in obtaining a timely appointment or force a woman to travel long distances to receive contraceptive care. These hurdles could lead her to forego such care completely.

Moreover, Title X was not designed to, and thus does not, provide "free" contraceptives to all women. Rather, Title X-funded providers offer no-cost family planning and related preventive health services only to women whose income is below the federal poverty level. 42 C.F.R. § 59.5(a)(7) (2014) (providing that, in general, "no charge will be made for services provided to any persons from a low-income family"); 42 C.F.R. § 59.2 (2014) (defining a low-income family as "a family whose annual income

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to obtain contraception would still need to find a provider who accepts Medicaid. This presents an additional barrier for affected women, given problems some states face in securing sufficient provider participation in Medicaid. *See* Julia Paradise, *Medicaid Moving Forward*, The Kaiser Comm'n on Medicaid & the Uninsured 7-8 (Mar. 2015) *available at* http://files.kff.org/attachment/issue-brief-medicaid-moving-forward.

17. Jennifer Frost et al., *Contraceptive Needs and Services, 2013 Update*, The Guttmacher Institute 7 (July 2015) *available at* http://www.guttmacher.org/pubs/win/contraceptive-needs-2013.pdf.

18. NARAL Pro-Choice Am., *Title X: The Nation's Cornerstone Family-Planning Program* 8 (Jan. 2010), *available at* http://www.prochoiceamerica.org/assets/files/birth-control-family-planning-titlex-cornerstone.pdf.

does not exceed 100 percent of the most recent Poverty Guidelines").[19] Women from families with annual incomes of up to 250 percent of the federal Poverty Guidelines may purchase services from Title X-funded providers on a schedule of discounts based on their ability to pay.[20] *See* 42 C.F.R. § 59.5(a)(8) (2014). Above that income level, women pay "the reasonable cost of providing services." *Id.*

Finally, there is no guarantee that a woman would be able to get the method of contraception that is best for her from a Medicaid provider. The traditional Medicaid program does not guarantee that every method of contraception will be covered for every eligible person. Rather, each state decides for itself which contraceptives will be covered in its Medicaid program.[21] As for the Title X program, Title X-funded providers offer a "broad range" of contraceptive methods; however, there is no guarantee that a woman will get the specific method she needs onsite, and if she has to go elsewhere for her

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19. $20,160 is the 2016 Poverty Guideline for a family of three in the 48 contiguous states and the District of Columbia. 81 Fed. Reg. 4036 (Jan. 25, 2016).

20. In 2016, 250 percent of the Poverty Guideline for a family of three in the 48 contiguous states and the District of Columbia is $50,400. 81 Fed. Reg. 4036 (Jan. 25, 2016).

21. *See* Ctrs. for Medicare & Medicaid Servs., *The State Medicaid Manual* 4-270 *available at* http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals-Items/CMS021927.html (last visited Feb. 15, 2016) ("[States] are free to determine the specific services and supplies which will be covered as Medicaid family planning services so long as those services are sufficient in amount, duration and scope to reasonably achieve their purpose.").

method, she will be unable to purchase her method at the discounted price. *See generally* Office of Population Affairs, *Program Requirements for Title X Funded Family Planning Projects* (Apr. 2014), *available at* http://www.nationalfamilyplanning.org/document.doc?id=1462.

In summary, all of Petitioners' proposals have serious flaws that render them impractical or insufficient to advance the Government's compelling interests. They would most likely require the affected women to find new providers and disrupt the continuity of care, shoulder the upfront costs for contraception and related education and counseling, and/or would not guarantee availability of the full range of contraceptive methods. In addition, women could be required to satisfy administrative requirements to demonstrate eligibility to participate in Petitioners' proposed programs, which represents a further obstacle to accessing contraceptives without out-of-pocket cost. Given that Petitioners appear to object to any method of certification that would result in affected women receiving contraceptive care, it is also unclear how a woman would even be able to prove eligibility in the first instance. It is also unclear how the Government would know to identify the affected women in order to notify them of the alternative method.

B. Petitioners' Proposals Inflict Tangible Harm on Affected Women.

The harms Petitioners' proposed alternatives would impose on affected women are substantial and tangible.

To illustrate what one of Petitioners' proposals means for an individual woman, take the example of a low-wage

worker seeking to avoid unintended pregnancy by getting an IUD, one of the most effective forms of contraception, but also one of the most expensive. For a woman in a low-wage job, the cost of the IUD could be nearly a month's salary.[22] Yet, Petitioners suggest that she pay that amount up front and seek reimbursement the following calendar year through a tax credit or deduction or via some new reimbursement system—or else be prevented from accessing effective care by an inability to pay. The manufacturer proposal presents a similar problem as her method may not fall under this "incentivized program." As such, Petitioners' proposal would put this woman in the very position she was in before the contraception regulations took effect—allowing cost to dictate whether she is able to use the method of contraception that is most appropriate for her and most effective in preventing pregnancy.

Moreover, forcing a low-wage worker into a separate system would require a substantial investment of time on her part, time that low-wage workers simply do not have.[23] Forcing her to discover the new system, establish eligibility, and/or research the various options, such as

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22. The federal minimum wage is $7.25 an hour. 29 U.S.C. § 206(a)(1). A woman who works 40 hours a week at the minimum wage earns $290 per week, or $1,160 per month, before taxes and deductions.

23. Julie Vogtman & Karen Schulman, Nat'l Women's Law Ctr., *Set Up to Fail: When Low-Wage Work Jeopardizes Parents' and Children's Success* 1 *available at* http://nwlc.org/wp-content/uploads/2016/01/final_nwlc_2016_kelloggReport.pdf (last visited Feb. 15, 2016) (noting that parents who work low-wage jobs often have "nonstandard and constantly fluctuating work hours, rigid attendance policies, and a lack of any paid time off").

searching on the marketplace, would require that she either sacrifice the work hours she needs to make ends meet, time with her children, or time she needs to dedicate to ensuring other basic needs are met for her and her family.

* * *

Petitioners' proposals would impose significant costs, administrative burdens, and logistical obstacles on Petitioners' female employees, students, and beneficiaries, resulting in real harm to the affected women and rendering these alternatives unable to further the Government's compelling interests.

Moreover, each proposal denies women health insurance coverage of a basic preventive health care service that 99% of sexually active women use at one point in their lives[24]—while men in the same health insurance plan would not experience a similar carve out of their basic health care needs. By introducing sex discrimination into health insurance packages, the proposals directly conflict with the Government's compelling interest in advancing women's equality.

None of the alternatives would accomplish what the contraception regulations guarantee: seamless access to the full range of contraceptive methods and related education and counseling without cost-sharing and within the woman's existing insurance framework.

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24. Guttmacher Inst., *Contraceptive Use in the United States* (October 2015), http://www.guttmacher.org/pubs/fb_contr_use.html.

Because these proposals would have a detrimental effect on Petitioners' female employees, students, and beneficiaries, they do not leave these women with "precisely the same access" as other women working for non-objecting employers, and do not meet their needs as effectively as the contraception regulations. Therefore, they cannot be justified under RFRA and this Court's application of RFRA, including *Hobby Lobby*, and should be rejected.

CONCLUSION

For all of the foregoing reasons, this Court should affirm the decisions below.

Dated: February 17, 2016

Respectfully submitted,

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APPENDIX

APPENDIX

The National Women's Law Center (NWLC) is a non-profit legal advocacy organization dedicated to the advancement and protection of women's legal rights and opportunities since its founding in 1972. The Center focuses on issues of key importance to women and their families, including economic security, employment, education, health, and reproductive rights, with special attention to the needs of low-income women, and has participated as counsel or *amicus curiae* in a range of cases before this Court.

9to5 is a national membership-based organization of women in low-wage jobs dedicated to achieving economic justice and ending discrimination. Its members and constituents are directly affected by workplace discrimination and poverty, among other issues. 9to5 is committed to protecting and advancing women's access to affordable health care and achieving workplace equality.

Founded in 2008, the **Abortion Care Network (ACN)** is the national association for independent community-based, abortion care providers and their allies. ACN and its member clinics work to ensure the rights of all people to experience respectful, dignified abortion care. Independent abortion providers care for the majority of people seeking abortion care in the United States, often serving individuals and families in the most rural parts of our nation and those with the least financial resources. Many independent providers also provide a full spectrum of reproductive health care, including providing contraception and contraceptive counseling to many of the most marginalized communities in the United States.

In 1881, the **American Association of University Women (AAUW)** was founded by like-minded women who had defied society's conventions by earning college degrees. Since then it has worked to increase women's access to higher education through research, advocacy, and philanthropy. Today, AAUW has more than 170,000 members and supporters, 1,000 branches, and 800 college and university partners nationwide. AAUW plays a major role in mobilizing advocates nationwide on AAUW's priority issues to advance gender equity. In adherence with its member-adopted Public Policy Program, AAUW supports choice in the determination of one's reproductive life and increased access to health care and family planning services.

The **American Federation of State, County and Municipal Employees (AFL-CIO)** is a labor organization with 1.6 million members in hundreds of occupations who provide vital public services in 46 states, the District of Columbia, and Puerto Rico. With well over half its members being women, AFSCME has a long history of advocating for gender equality.

For over 100 years the **American Sexual Health Association** has supported women's sexual and reproductive health and rights. The organization believes strongly that women have the right to access birth control under the affordable care act. Women's economic security is dependent on their ability to choose if and when they have children.

Atlanta Women for Equality is a nonprofit organization dedicated to providing free legal advocacy to women and girls facing sex discrimination in the workplace or school and to helping our community build employment and educational environments according to true standards of equal treatment. Its central goal is to use the law to overcome the oppressive power differentials that socially predetermined gender roles impose.

The **Business & Professional Women's Foundation (BPWF)** supports workforce development programs and workplace policies that recognize the diverse needs of working women, communities and businesses. Access to to birth control is central for working women to achieve economic security and workplace equity.

California Women Lawyers (CWL) has represented the interests of more than 30,000 women in all facets of the legal profession since 1974. CWL's mission includes advancing women's interests, extending universal equal rights and eliminating bias. In pursuing its values of social justice and gender equality, CWL often joins amicus briefs challenging discrimination by private and governmental entities, weighs in on proposed legislation, and implements programs fostering the appointment of women and other qualified candidates to the bench.

The **California Women's Law Center ("CWLC")** is a statewide, nonprofit law and policy center dedicated to advancing the civil rights of women and girls through impact litigation, advocacy and education. CWLC's issue priorities include reproductive justice, gender

discrimination, violence against women, and women's health. Since its inception in 1989, CWLC has advocated for unburdened access to healthcare for all women, including contraception and reproductive health choices. Because the Zubik v. Burwell case raises questions within its expertise and concern, CWLC joins the National Women's Law Center's Amicus Brief in Support of Respondents.

The **Center for Community Change** partners with community-based, membership organizations throughout the country to create access to economic security and equality for women. Its work, and that of its partner community-based organizations includes a focus on removing barriers to economic security including lack of access to birth control coverage.

Chicago Foundation for Women improves the lives of women and girls by investing in solutions to the most pressing challenges they face economic security, violence and access to health care. Thanks to its broad experience and deep roots in the community, CFW remains at the forefront of anticipating new challenges facing women and girls and takes bold, but informed, philanthropic risks. Partnering with nonprofits to provide innovative solutions, CFW works in neighborhoods that may not see a great deal of investment, supporting emerging organizations often overlooked by others. CFW believes that by raising awareness about the issues affecting women and girls, it promotes increased investment in them, leading to a community in which all women and girls have the opportunity to achieve their full potential to live in safe,

just and healthy communities. Key to these goals are full and complete access to healthcare, living wage jobs, and freedom from violence.

The **Coalition of Labor Union Women** is a national membership organization based in Washington, DC with chapters throughout the country. Founded in 1974 it is the national women's organization within the labor movement which is focused on empowering women in the workplace, advancing women in their unions, encouraging political and legislative involvement, organizing women workers into unions and promoting policies that support women and working families.

Connecticut Citizen Action Group has been fighting for justice for over forty-four years. By utilizing grassroots power, CCAG has created change on the issues our members care about including quality, affordable health care, protection of consumers, the environment, and democracy.

The **Connecticut Women's Education and Legal Fund (CWEALF)** is a non-profit women's rights organization dedicated to empowering women, girls and their families to achieve equal opportunities in their personal and professional lives. CWEALF advances the rights of individuals in the legal system, educational institutions, workplaces, and in their private lives. Since its founding in 1973, CWEALF has provided legal information and conducted public policy and advocacy to advocate for women's rights, including access to full reproductive health services.

Founded in 1974, **Equal Rights Advocates (ERA)** is a national non-profit legal organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls. ERA litigates class actions and other high-impact cases on issues of gender discrimination in employment and education and has participated as amicus curiae in scores of cases involving the interpretation and application of laws affecting women's employment rights and access to justice.

The **Feminist Majority Foundation (FMF)** is a feminist research and action organization focused on furthering the legal, social, and political equality of women. To carry out these aims, FMF engages in research and public policy development, public education programs, grassroots organizing projects, as well as leadership training and development programs for women and girls. FMF is dedicated to women's equality and reproductive health, including protecting and advancing women's access to contraception as intended by the Affordable Care Act.

Girls Inc. inspires all girls to be strong, smart, and bold, providing more than 140,000 girls across the U.S. and Canada with life-changing experiences and solutions to the unique challenges girls face. The Girls Inc. Experience consists of people, an environment, and programming that, together, empower girls to succeed. Trained staff and volunteers build lasting, mentoring relationships in girls-only spaces that are physically and emotionally safe and where girls find a sisterhood of support with shared drive, mutual respect, and high expectations. Hands-on, research-based programs provide girls with the skills

and knowledge to set goals, overcome obstacles, and improve academic performance. Informed by girls and their families, Girls Inc. also advocates for legislation and initiatives that increase opportunities for girls.

Good Jobs First is a non-profit organization founded in 1998 which has had a majority-female staff since 1999 and recognizes the value of women's healthcare, including birth control, to strong families and successful workplaces. We promote accountability in economic development incentives, including Job Quality Standards such as employer-paid healthcare, paid family leave, vacation and other family-friendly benefits.

Hadassah, the Women's Zionist Organization of America, Inc., founded in 1912, is the largest Jewish women's membership organization in the United States, with over 330,000 Members, Associates and supporters nationwide. While traditionally known for its role in developing and supporting health care and other initiatives in Israel, Hadassah has longstanding commitments to improving health care access in the United States, particularly with regard to the health care needs of women. Hadassah strongly supports full and complete access to reproductive health care services and a woman's right to make health decisions according to her own religious, moral and ethical values, and recognizes the role that reproductive freedom plays in women's empowerment, economic equity and security.

The **Institute for Science and Human Values** is committed to protecting and advancing women's full

equality and health, with a particular interest in ensuring that women receive all of the benefits of access to paid contraceptive coverage.

Jewish Women International is a not-for-profit organization founded in 1897. JWI is the leading Jewish organization empowering women through healthy relationship training, financial literacy education, and the proliferation of female leadership.

The **League of Women Voters of the United States** is a nonpartisan, community-based organization that was founded in 1920 as an outgrowth of the struggle to win voting rights for women. The League is organized in close to 750 communities and in every state, with more than 150,000 members and supporters nationwide. The League of Women Voters has long standing positions in support of equal access to health care and equal rights for women.

Legal Momentum, the Women's Legal Defense and Education Fund, is the oldest legal women's rights advocacy groups in the United States, and has worked to advance the rights of women and girls since 1970. Inherent in its mission is securing and protecting reproductive rights, including the right to contraception. Legal Momentum has been involved in dozens of cases protecting reproductive freedom and health in state and federal courts throughout the country. Legal Momentum has also authored and submitted several amicus briefs to the U.S. Supreme Court challenging the constitutionality of policies and statutes that infringe on women's right to reproductive health.

Legal Voice is a nonprofit public interest organization in the Pacific Northwest that works to advance the legal rights of women and girls through litigation, legislation, and public education on legal rights. Since its founding in 1978, Legal Voice has been at the forefront of advocating for comprehensive reproductive health care, including contraceptive coverage and abortion care. Legal Voice has been a leader in advocating for patients' needs and working to change laws and policies that deny patients access to a full range of care, often for reasons based on religion or other personally held moral objections. Legal Voice services as a regional expert on reproductive health care and conscience-based refusals of health care and other services to women and LGBTQ people.

Mabel Wadsworth Women's Health Center is the only not-for-profit, freestanding, independent feminist health center in Maine and one of only fourteen nationwide. The Center's mission is to provide educational and clinical services in sexual and reproductive health to women regardless of age, ability, race or ethnicity, sexual orientation, or economic status. For more than 31 years, the Center has advocated for women to have access to affordable birth control, especially those with limited resources, and empowered thousands of women to control their reproductive lives.

The **Maine Women's Lobby** recognizes that the ability to determine whether she will have children and if so how many and how often is the foundation of a woman's autonomy and economic security. For that reason, the Lobby strongly supports the provision of the Affordable Care Act that requires insurance coverage of birth control.

Founded in 1974, MANA, A National Latina Organization, is the oldest and largest national grassroots membership organization for Hispanic women with chapters, individual members and affiliates across the country. MANA is committed to empowering Latinas through leadership development, community service, and advocacy. As such, MANA represents the interests of Latina women, youth and families on issues that impact our communities, including education, health, financial literacy, and equal and civil rights.

Mental Health America (MHA), formerly the National Mental Health Association, is a national membership organization composed of individuals with lived experience of mental illnesses and their family members and advocates. The nation's oldest and leading community-based nonprofit mental health organization, MHA has more than 200 affiliates dedicated to improving the mental health of all Americans, especially the 54 million people who have severe mental disorders. Through advocacy, education, research, and service, MHA helps to ensure that people with mental illnesses are accorded respect, dignity, and the opportunity to achieve their full potential. MHA is particularly concerned that denial of coverage for contraception will result in increased mental health problems and create barriers to recovery.

MergerWatch is a national organization dedicated to advocating for health care policies and practices that are guided by scientifically accurate, unbiased medical information and each patient's own religious or ethical beliefs. It assists community-based partners to protect

patients' rights and their access to comprehensive reproductive health services at secular hospitals when they propose business partnerships with religiously-sponsored hospitals that restrict care based on doctrine.

For over 40 years, the **Ms. Foundation for Women** has secured women's rights and freedoms with a special commitment to building the power of low-income, immigrant and women of color. The foundation invests funds, time, expertise and training in organizations nationwide.

NARAL Pro-Choice America is a national advocacy organization dedicated since 1969 to supporting and protecting, as a fundamental right and value, a woman's freedom to make personal decisions regarding the full range of reproductive choices, including preventing unintended pregnancy, bearing healthy children, and choosing legal abortion. Through education, organizing, and influencing public policy, NARAL works to guarantee every woman this right and access to the full benefits of the Affordable Care Act, including contraceptive coverage with no copay, is critical to this goal.

Established in 1955, the **National Association of Social Workers (NASW)** is the largest association of professional social workers in the United States with over 130,000 members in 55 chapters. NASW develops policy statements on issues of importance to the social work profession. Consistent with those statements, NASW advocates that every individual, within the context of her or his value system, must have access to family planning,

abortion, and other reproductive health services.[1] [FN1: NASW Policy Statements: Family Planning and Reproductive Choice in Social Works Speaks (2015) 114, 117 (10th ed. 2015).]

The **National Association of Women Lawyers (NAWL)**, founded in 1899, is the nation's oldest women's bar association in the country. NAWL is a national voluntary organization devoted to the interests of women lawyers as well as equality and fairness for all women. By signing on to this amicus brief, NAWL voices its support for access to contraceptive coverage to protect women's health.

The **National Black Justice Coalition (NBJC)** is a civil rights organization dedicated to the empowerment of Black lesbian, gay, bisexual and transgender (LGBT) people. Since 2003, NBJC has provided leadership at the intersection of national civil rights groups and LGBT organizations, advocating for the unique challenges and needs of the African American LGBT community that are often relegated to the sidelines. NBJC envisions a world where all people are fully-empowered to participate safely, openly and honestly in family, faith and community, regardless of race, class, gender identity or sexual orientation.

The **National Consumers League (NCL)**, founded in 1899, is America's pioneer consumer organization. NCL's mission is to protect and promote social and economic justice for consumers and workers in the United States and abroad.

The **National Immigration Law Center (NILC)** is the primary advocacy organization in the United States exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. NILC envisions a U.S. society in which all people—regardless of their race, gender, or immigration or economic status—are treated fairly and humanely, and have equal access to the education, health care (including reproductive health care), government resources, and economic opportunities they need to achieve their full human potential.

The **National Institute for Reproductive Health** is a non-profit advocacy organization working across the country to increase access to reproductive health care by changing public policy, galvanizing public support, and normalizing women's decisions to have abortions and use contraception. In order to support the vision of a society in which each person has the freedom to control their reproductive and sexual lives, the National Institute for Reproductive Health seeks to preserve women's right to affordable and accessible contraception, and has filed or participated in numerous amicus briefs in cases that affect this right.

The **National Organization for Women (NOW) Foundation** is a 501(c)(3) organization devoted to furthering women's rights through education and litigation. Created in 1986, NOW Foundation is affiliated with the National Organization for Women, the largest feminist grassroots activist organization in the United States, with hundreds of thousands of members and

contributing supporters in hundreds of chapters in all 50 states and the District of Columbia. Since its inception, NOW Foundation's goals have included achieving access to the full range of reproductive health services for all women, no matter where they work or what their income level may be.

The **National Partnership for Women & Families** (formerly the Women's Legal Defense Fund) is a national advocacy organization that develops and promotes policies to help women achieve equal opportunity, quality health care, and economic security for themselves and their families. Since its founding in 1971, the National Partnership has worked to advance women's health and equal employment opportunities through several means, including by challenging discriminatory employment practices in the courts.

The **North Dakota Women's Network** seeks to improve the lives of women and see that access to the full range of health services are vital to women's well-being.

Planned Parenthood Federation of America is the oldest and largest provider of reproductive health care in the United States, delivering medical services through over 650 health centers operated by 59 affiliates across the United States. Its mission is to provide comprehensive reproductive health care services and education, to provide educational programs relating to reproductive and sexual health, and to advocate for public policies to ensure access to contraception.

Pro-Choice Resources is a non-profit organization that has been working since 1967 to ensure that all people and communities have the power and resources to make sexual and reproductive health decisions with self-determination and dignity.

Raising Women's Voices for the Health Care We Need (RWV) is a national initiative working to ensure that the health care needs of women and families are addressed as the Affordable Care Act is implemented. It has a diverse network of thirty-one grassroots health advocacy organizations in twenty eight states. RWV has a special mission of engaging women who are not often invited into health policy discussions: women of color, low-income women, immigrant women, young women, and members of the lesbian, gay, bisexual, transgender, and queer community.

Re:Gender is a national non-profit that works to end gender inequity, and discrimination against girls and women, by exposing root causes and advancing research-informed action.

The **Reproductive Health Access Project** is a national nonprofit that trains and supports clinicians to make reproductive health care accessible to everyone. It focuses on three key areas: abortion, contraception and miscarriage care.

The **Reproductive Health Technologies Project (RHTP)** works to advance the ability of every woman to achieve full reproductive freedom with access to the safest,

most effective, and preferred methods for controlling her fertility and protecting her health. RHTP's long-term goal is to change the political and commercial climate in the United States so women have access to technologies they want to become pregnant when they are ready, end a pregnancy when they are not, and promote their health and wellbeing throughout their reproductive lives.

The **Sargent Shriver National Center on Poverty Law (Shriver Center)** advocates on behalf of low-income families and individuals, representing them in a wide range of policy and legal matters including employment, health care, public benefits, education, housing, community and criminal justice, and the manner in which these issues especially impact women. Through the work of its Women's Law and Policy Project and Health Care Justice unit, the Shriver Center supports the right of all women to control their health care decisions, including access to health care insurance that includes birth control coverage. The Shriver Center's advocacy links access to birth control not only to women's health, but to women's economic security, opportunity, and equality.

The **Service Employees International Union (SEIU)** is the largest health care union in the United States. More than half of SEIU's two million members work in the health care industry, and half of SEIU's members are women. SEIU is deeply committed to ensuring that all working people, men and women alike, have access to affordable health care, including contraceptive coverage, as intended by the Affordable Care Act.

The **Sexuality Information and Education Council of the United States (SIECUS)** was founded in 1964 to provide education and information about sexuality and sexual and reproductive health. SIECUS affirms that sexuality is a fundamental part of being human, one that is worthy of dignity and respect. It advocates for the right of all people to accurate information, comprehensive education about sexuality, and access to sexual health services.

SisterReach is a grassroots organization focused on empowering, organizing, and mobilizing women and girls in the community on their reproductive and sexual health so they can become advocates for themselves. It believes access to contraception and comprehensive sexual and reproductive health education are tools that enable women and girls to lead healthy lives, have healthy families, and to be part of healthy communities.

The **South Carolina Coalition for Healthy Families** is a network of organizations and individual experts that advocate, educate, and collaborate in support of comprehensive sexual and reproductive health policies in the state of South Carolina.

The **Southwest Women's Law Center** is a non-profit policy and advocacy Law Center dedicated to protecting access to contraceptives and reproductive services for girls and women in New Mexico. The Law Center was founded in 2009 and works tirelessly to protect women's economic security and equality. It recognizes that access to reproductive justice is an economic issue and engages

with women and girls in communities around the State of New Mexico to ensure that economic security remains a protected priority.

The District of Columbia Employment Justice Center works tirelessly to secure, protect and promote workplace justice in D.C.

UniteWomen.org ACTION works to end inequality for women that stems from prejudice and discrimination and works to advance the human and civil rights of women and girls. UniteWomen.org ACTION believes that all women should determine their own reproductive health.

USAction is a non-profit organization founded in 1999 with hundreds of thousands of activists and affiliates in 22 states that builds power by uniting people locally and nationally, on-the-ground and online, to win a more just and progressive America.

The **Women Donors Network (WDN)** is committed to protecting the rights and access to affordable and preventive women's healthcare, with a particular interest in ensuring that women receive the full benefits of no-cost-sharing contraceptive coverage as intended by the Affordable Care Act. WDN supports reproductive health, rights, and justice solutions that enable all women to make important life decisions for themselves and their families.

Women Employed's mission is to improve the economic status of women and remove barriers to economic equity. Women Employed has promoted fair

employment practices since 1973. Women Employed is committed to protecting and advancing women's health, with a particular interest in ensuring that women receive the full benefits of access to birth control coverage as intended by the Affordable Care Act.

Women of Reform Judaism that represents more than 65,000 women in nearly 500 women's groups in North America and around the world comes to this issue with a proud legacy of fighting for civil rights and social justice including defending both religious freedom and the separation of church and state.

Founded in 1917, the **Women's Bar Association of the District of Columbia (WBA)** is one of the oldest and largest voluntary bar associations in metropolitan Washington, DC. Today, as in 1917, we continue to pursue our mission of maintaining the honor and integrity of the profession; promoting the administration of justice; advancing and protecting the interests of women lawyers; promoting their mutual improvement; and encouraging a spirit of friendship among our members. We believe that the administration of justice includes women's access to healthcare services. Lack of access can affect women's financial well-being, job security, educational attainment, and future opportunity.

The **Women's Institute for Freedom of the Press (WIFP)** is a nonprofit research, education, and publishing organization. WIFP believes that birth control is central to women's economic security and equality.

The **Women's Law Center of Maryland, Inc.** is a nonprofit, public interest, membership organization of attorneys and community members with a mission of improving and protecting the legal rights of women. Established in 1971, the Women's Law Center achieves its mission through direct legal representation, research, policy analysis, legislative initiatives, education, and implementation of innovative legal-services programs to pave the way for systematic change. Through its various initiatives, the Women's Law Center pays particular attention to issues related to reproductive rights, gender discrimination, sexual harassment, employment law, and family law.

Founded in 1974, the **Women's Law Project** is a 501(c)(3) non-profit women's legal advocacy organization with offices in Philadelphia and Pittsburgh, Pennsylvania. The mission of the Women's Law Project is to create a more just and equitable society by advancing the rights and status of all women throughout their lives. Among the Women's Law Project's priorities are improving access to reproductive health care and eliminating sex discrimination in employment.

WV FREE is a reproductive health, rights and justice organization that works every day for West Virginia women and families to improve education on reproductive options, increase access to affordable birth control, reduce teen pregnancy and improve adolescent health, and protect personal decision-making, including decisions about whether or when to have a child.

Population Connection is a national, non-profit education and advocacy organization dedicated to ensuring that every woman and family has access to safe, effective and affordable contraceptives.

Gender Justice is a nonprofit advocacy organization based in the Midwest that works to eliminate gender barriers based on sex, sexual orientation, gender identity, or gender expression. Gender Justice targets the root causes of gender discrimination, such as cognitive bias and stereotyping. Through impact litigation, policy, and education programs, we address the economic and personal consequences of gender bias.

The **National Abortion Federation (NAF)** is the professional association of abortion providers in North America. It's mission is to ensure safe, legal, and accessible abortion care, which promotes health and justice for women. Through its supporting organization, the NAF Hotline Fund, NAF also operates a toll-free Hotline, which was established in 1979 to help women who experience unintended pregnancy access unbiased information, referrals to providers offering quality care, and limited financial assistance. The Hotline hears from thousands of women each week who are impacted by unintended pregnancy. Thus, NAF has a deep-seated interest in this litigation.

Methodist Federation for Social Action ("MFSA") is dedicated to lifting up the voice of social justice within faith communities through education, organizing, and advocacy. For MFSA, reproductive health, choice, and

justice are a matter of faith. This means every child should be a wanted child, supported by adequate parental access to family planning and economic stability, adequate nutritional resources, and medical, spiritual, emotional, and psychological support for the whole family. Denial to such access and care creates undue harm on families by increasing economic hardship and decreasing access to safe, legal reproductive health care.

UltraViolet is a powerful and rapidly growing community of people who work to expand women's rights. UltraViolet puts the voices of all women, especially women of color and LGBTQ women, front and center.